Amran bin Ab Rahman & Ors v Dato' Hj Ikmal Hisham bin Abdul Aziz & Ors (No 1)

HIGH COURT (KUALA LUMPUR) — SUIT NO 22NCVC-191–02 OF 2013
LEE HENG CHEONG JC
15 AUGUST 2013

Civil Procedure — Locus standi — Action against society — Former secretary of UMNO stripped of membership — Declaration that organisation was illegal — Claim for damages — Whether there was locus standi to institute action — Threshold requirement of locus standi — Whether fulfilled — Whether there was cause of action — Rules of Court 2012

The first plaintiff, a former Secretary of the Tanah Merah Division of UMNO, was stripped of his membership from UMNO on 10 February 2010. The second and third plaintiffs were members of UMNO. The first defendant was the Ketua Bahagian of the UMNO Tanah Merah Division since 2009 whilst the second defendant was the Public Officer of UMNO. The third defendant was the Registrar of Societies of Malaysia. The plaintiffs sought a declaration that UMNO Tanah Merah Division was an illegal organisation and consequently, the first defendant could not hold the post as Ketua Bahagian UMNO Tanah Merah; damages against the first and second defendants in the sum of RM205,285,504. Enclosures 5 and 13 were filed by the first and second defendants while encl 9 was an application by the third defendant to strike out the plaintiffs' writ of summons dated 21 March 2013 and statement of claim dated 21 March 2013 under O 18 r 19(1) of the Rules of Court 2012 ('ROC'). The first and second defendants argued that the plaintiffs have no cause of action and locus standi against the third defendant.

Held, striking out the plaintiffs' suit with costs:

(1) Arising from the first plaintiff's admission that he had terminated his membership in UMNO since 10 February 2013, the first plaintiff lacked locus standi since he was no longer a member of UMNO at the time this suit was instituted. As regards the locus standi of the second and third plaintiffs, they were caught by article 20.7 of the UMNO Constitution. The second and third plaintiffs' action in filing this suit, would result in their membership in UMNO, being automatically terminated. Since their membership in UMNO have been terminated, they thus lacked the locus standi to maintain this action (see paras 12–13).

(2) The plaintiffs must establish the threshold requirement of locus standi to maintain this action. However, the plaintiffs lacked the requisite locus

standi. Since the plaintiffs' relief sought against the third defendant was merely a consequential relief, requiring the third defendant to do the necessary action under the Societies Act 1966 in the event the court grants the plaintiffs' relief on declaration that UMNO Bahagian Tanah Merah was unlawful. The plaintiffs had no locus standi to file and maintain this suit filed against the third defendant. The court granted an order in terms of encl 9 and the plaintiffs' suit was struck out with costs (see paras 16–18).

[Bahasa Malaysia summary

Plaintif pertama, bekas Setiausaha Daerah UMNO Tanah Merah, dilucutkan keahliannya daripada UMNO pada 10 Februari 2010. Plaintif-plaintif kedua dan ketiga adalah ahli-ahli UMNO. Defendan pertama adalah Ketua Bahagian UMNO Daerah Tanah Merah Division semenjak 2009 sementara defendan kedua adalah Pegawai Awam UMNO. Defendan ketiga adalah Pendaftar Persatuan Malaysia. Plaintif-plaintif memohon perisytiharan bahawa UMNO Daerah Tanah Merah adalah pertubuhan haram dan akibatnya, defendan pertama tidak dapat memegang jawatan tersebut sebagai Ketua Bahagian UMNO Tanah Merah; ganti rugi terhadap defendan pertama dan kedua dalam jumlah RM205,285,504. Lampiran-lampiran 5 dan 13 difailkan oleh defendan pertama dan kedua sementara lampiran 9 adalah permohonan oleh defendan ketiga untuk membatalkan writ saman plaintif bertarikh 21 Mac 2013 dan pernyataan tuntutan bertarikh 21 Mac 2013 di bawah A 18 k 19(1) Kaedah-Kaedah Mahkamah 2012 ('KKM'). Defendan pertama dan kedua berhujah bahawa plaintif-plaintif tidak mempunyai kausa tindakan dan locus standi terhadap defendan ketiga.

Diputuskan, membatalkan guaman plaintif dengan kos:

(1) Berbangkit daripada pengakuan plaintif pertama bahawa dia telah menamatkan keahliannya dalam UMNO semenjak 10 Februari 2013, plaintif pertama tidak mempunyai locus standi memandangkan dia bukan lagi ahli UMNO pada masa tindakan ini dimulakan. Berkaitan locus standi plaintif-plaintif kedua dan ketiga, mereka adalah terangkum di bawah artikel 20.7 Perlembagaan UMNO. Tindakan plaintif-plaintif kedua dan ketiga dalam memfailkan tindakan ini, akan mengakibatkan keahlian mereka dalam UMNO ditamatkan, mereka oleh itu tidak mempunyai locus standi untuk mengekalkan tindakan ini (lihat perenggan 12–13).

(2) Plaintif-plaintif mesti membuktikan keperluan ambang locus standi untuk mengekalkan tindakan ini. Walau bagaimanapun, plaintif-plaintif tidak mempunyai locus standi. Memandangkan relief yang dipohon oleh plaintif-plaintif terhadap defendan ketiga adalah hanya relief penting, memerlukan defendan ketiga untuk berbuat tindakan tertentu di bawah Akta Pertubuhan 1966 jika mahkamah memberikan relief kepada

plaintif atas perisytiharan bahawa UMNO Bahagian Tanah Merah adalah tak sah. Plaintif-plaintif tidak mempunyai locus standi untuk memfailkan dan mengekalkan tindakan ini terhadap defendan ketiga. Mahkamah memberikan perintah dalam terma lampiran 9 dan tindakan plaintif dibatalkan dengan kos (lihat perenggan 16–18).]

Cases referred to

Affin Bank Bhd v Mohd Kasim Ibrahim [2013] 1 CLJ 465, FC (refd)
Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corporation Bhd [1993] 3 MLJ 36, SC (refd)
Government of Malaysia v Lim Kit Siang; United Engineers (M) Berhad v Lim Kit Siang [1988] 2 MLJ 12, SC (folld)
Sim Kie Chon v Superintendent of Pudu Prison & Ors [1985] 2 MLJ 385, SC (refd)
Tan Sri Haji Othman Saat v Mohamed bin Ismail [1982] 2 MLJ 177, FC (folld)

Legislation referred to

Rules of Court 2012 O 18 r 19(1), r 19(1)(a), (b), (c), (d)
Societies Act 1966

Wan Hidayat (Fadiah Fikri with him) (Kesavan) for the plaintiff.
Fahmi bin Adilah (Choo Shi Jin with him) (Hafarizam Wan & Aisha Mubarak) for the first and second defendants.

Lee Heng Cheong JC:

(ENCLOSURE 9)

INTRODUCTION

[1] The first plaintiff was the former Secretary of the Tanah Merah Division of the United Malay National Organisation ('UMNO') and was stripped of his membership from UMNO on 10 February 2010.

[2] The second and third plaintiffs were members of UMNO.

[3] The first defendant is the *Ketua Bahagian* of the UMNO Tanah Merah Division since 2009 whilst the second defendant is the Public Officer of UMNO with an address at Tingkat 38, Menara Dato' Onn, Jalan Tun Ismail, 50480 Kuala Lumpur.

[4] The third defendant is the Registrar of Societies of Malaysia with an address at Jabatan Pendaftaran Pertubuhan Malaysia, Kementerian dalam Negeri, Aras 2 dan 3, Blok B, Bangunan Utama, Chancery Place, Jalan Diplomatic 2, Presint Diplomatik, 62542, Putrajaya.

A THE PLAINTIFFS' CLAIM

[5] In this suit, the plaintiffs' sought the following reliefs:

(a) *Deklarasi bahawa UMNO Bahagian Tanah Merah adalah pertubuhan haram;*

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(b) *Akibatnya defendan pertama tidak boleh memegang jawatan sebagai Ketua Bahagian UMNO Tanah Merah Kelantan;*

(c) *Defendan ketiga mengambil tindakan di bawah peruntukkan-peruntukkan berkenaan di bawah Akta Pertubuhan 1966 terhadap UMNO Bahagian Tanah Merah, Kelantan;*

C

(d) *Defendan pertama dan kedua membayar ganti rugi khas sebanyak RM205,285,504 atau sebagaimana yang ditentukan oleh mahkamah yang mulia ini;*

D

(e) *Kos-kos bagi tindakan ini; dan;*

(f) *Relief-relief lanjut atau yang lain yang mahkamah yang mulia ini menyifatkan sesuai dan patut diberikan.*

E

[6] Enclosures 5 and 13 are filed by the first and second defendants whilst and encl 9 is an applications by the third defendant to strike out the plaintiff's writ of summons dated 21 March 2013 and statement of claim dated 21 March 2013 under O 18 r 19(1) of the Rules of Court 2012. All enclosures are heard together. The first and second defendants are proceeding under O 18 r 19 (1)(a), (b), (c) or (d) Rules of Court 2012 whilst the third defendant is proceeding under O 18 r 19 (1)(a), (b) or (d) of the Rules of Court 2012 on the following grounds:

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(a) that the plaintiffs have no cause of action against the third defendants; and

(b) the plaintiffs have no locus standi to bring this suit against the third defendants

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[7] In the third defendant's submission, it is stated therein that the third defendant shall only be proceeding on the second ground ie that the plaintiffs have no locus standi to institute the action herein.

I THE LAW ON STRIKING OUT UNDER O 18 R 19 (1) OF THE RULES OF COURT 2012 ('ROC 2012')

[8] In the Supreme Court case of *Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corporation Bhd* [1993] 3 MLJ 36, Mohamed Dzaidin bin Hj Abdullah SCJ (as he then was) held as follows:

> The principles upon which the court acts in exercising its power under any of the four limbs of O 18 r 19(1) of the RHC are well settled. It is only in plain and obvious cases that recourse should be had to the summary process under this rule (per Lindley MR in *Hubbuck& Sons Ltd v Wilkinson, Heywood & Clark Ltd 7*, and this summary procedure can only be adopted when it can be clearly seen that a claim or answer is on the face of it 'obviously unsustainable' (see *AG of Duchy of Lancaster v L & NW Rly Co 8*). It cannot be exercised by a minute examination of the documents and facts of the case, in order to see whether the party has a cause of action or a defence (see *Wenlock v Moloney & Ors 9*). The court must be satisfied that there is no reasonable cause of action or that the claims are frivolous or vexatious or that the defences raised are not arguable.

[9] Further in the Supreme Court case of *Sim Kie Chon v Superintendent of Pudu Prison & Ors* [1985] 2 MLJ 385, Abdul Hamid Omar CJ, at p 386, held as follows:

> The principle governing the striking out of pleadings is clear in that it is only in plain and obvious cases that recourse should be had to the summary process under O 18 r 19 of the Rules of the High Court 1980: 'the summary procedure under this Rule can only be adopted when it can clearly be seen that a claim or answer is on the face of it 'obviously unsustainable'.' (*Attorney-General of Duchy of Lancaster v L & NW Railway Co)* [1892] 3 Ch 274 (Supreme Court Practice 1985).

CONSIDERATION OF THE APPLICATION (ENCL 9)

[10] Having read and considered all the relevant pleadings and submission of learned counsels for the defendants and the plaintiffs, this court finds that there are merits in the third defendant's application (encl 9) on the following grounds.

LOCUS STANDI

[11] The plaintiffs contended that on the issue of the plaintiff's locus standi, it is sufficient if the plaintiffs can show their interests to institute and maintain this suit. The plaintiffs relied on the case of *Affin Bank Bhd v Mohd Kasim Ibrahim* [2013] 1 CLJ 465 where the court held, inter alia, as follows:

> A declaration merely declares the right of the parties. As such, a person seeking for a declaratory judgment need not show or establish a cause of action. He merely needs to show his interest in the issue at hand.

[12] On the issue of the first plaintiff's locus standi, this court finds that arising from the first plaintiff's admission that he had terminated his membership in UMNO since 10 February 2013, the first plaintiff lacks locus standi since he was no longer a member of UMNO at the time this suit was instituted. As regards the locus standi of the second and third plaintiffs, they are caught by article 20.7 of the UMNO Constitution which states as follows:

A Seseorang ahli yang membawa apa-apa atau hak keahliannya ke Mahkamah sebelum mematuhi sepenuhnya peraturan-peraturan parti maka keahliannya di dalam parti gugur dengan sendirinya.

B **[13]** Applying the above article 20.7 to this case, the second and third plaintiffs' action in filing this suit, would result in their membership in UMNO, being automatically terminated. Since their membership in UMNO have been terminated, they thus lacked the locus standi to maintain this action.

C **[14]** The test of standing in a proceeding for a declaration was restated in *Tan Sri Hj Othman Saat v Mohamed Ismail* [1982] 2 MLJ 177 where the Federal Court held:

Although it is not necessary for a plaintiff who seeks relief by way of declaratory judgment to show that he has a present cause of action, he must be somebody with such an interest
D *in the subject-matter of the action as to justify his seeking relief.*

It cannot be doubted that the respondent had a legitimate grievance and there was a threat to his private right by the appellant. He certainly met the 'real interest' test to acquire a locus standi to seek for the said declarations. The High Court too was aware of this limitation when it stated that 'declaratory relief would be refused to
E spectators, speculators and busybodies'. (Emphasis added.)

[15] In *Government of Malaysia v Lim Kit Siang; United Engineers (M) Berhad v Lim Kit Siang* [1988] 2 MLJ 12, the court dealt with the question of 'locus standi' of a private person seeking a declaration and an injuction for the
F enforcement of a public right purportedly for public interest. Abdul Hamid CJ (Malaya) speaking for the court said inter as follows:

This appeal raises an issue of considerable importance. The central issue revolves round the question of 'locus standi' of a private person seeking a declaration and an injunction
G *in a case for the enforcement of a public right purportedly for public interest.*

...

'Locus standi' is generally understood to mean the right of a party to appear and be heard by a tribunal. A litigant is said to have locus standi, in effect standing to sue in a court of law, if that court recognises his or her ability to institute and maintain
H proceedings before it. The question of standing is thus separate and distinct from questions of the substantive merits and the legal capacity of the plaintiff. It follows, therefore, that a litigant may lack standing to bring a case which would succeed if brought by the right litigant. Put in a nutshell, the law of standing to sue has two fundamental rules. First, apart from certain cases in which standing to sue is in the
I discretion of the court, the plaintiff must possess an interest in the issues raised in the proceedings. Second, where the private plaintiff relies on an interest in the enforcement of a public right and not of a private right, standing will be denied unless the Attorney-General consents to a relator action, or the plaintiff can demonstrate some special interest beyond that possessed by the public generally. (Emphasis added.)

[16] Applying the principles enunciated in the above cases, it is clear that the plaintiffs must establish the threshold requirement of locus standi to maintain this action and this court finds that the three plaintiffs herein lacked the requisite locus standi.

[17] Another ground why the plaintiffs' action against the third defendant is struck out is because since the plaintiffs' relief sought against the third defendants is merely a consequential relief, requiring the third defendant to do the necessary action under the Societies Act 1966 in the event this honourable court grants the plaintiffs' relief on declaration that UMNO Bahagian Tanah Merah is unlawful.

[18] Since this court found in encls 5 and 13 which were filed by the first and second defendants respectively herein against the plaintiffs, that the plaintiffs' action filed against the first and second defendants is frivolous, vexatious, discloses no reasonable cause of action and an abuse of the process of the court, with costs, the plaintiffs' action against the third defendant, is similarly struck out.

ORDER

[19] In the light of the above, this court finds, inter alia, that the plaintiffs have no locus standi to file and maintain this suit filed against the third defendant. In the premises, this court grant an order in terms of encl 9 and the plaintiffs' suit is struck out with costs.

Plaintiffs' suit struck out with costs.

Reported by Afiq Mohamad Noor